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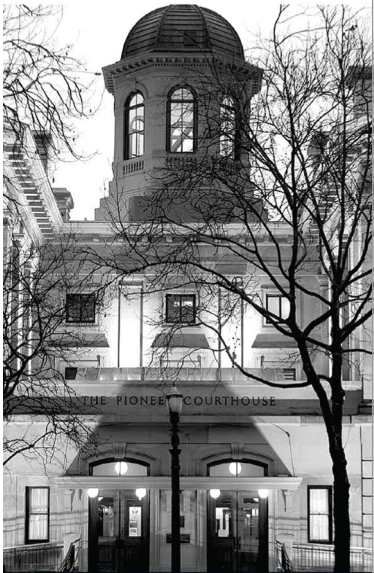
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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON PORTLAND DIVISION

DON'T SHOOT PORTLAND, et al.,

Plaintiffs,

vs.

Case No. 3:20-cv-00917-HZ

CITY OF PORTLAND, a municipal
Corporation,

Defendant.

REMOTE DEPOSITION BY VIDEO CONFERENCE OF

COMMANDER JEFFREY BELL

TAKEN ON
FRIDAY, OCTOBER 29, 2021
9:08 A.M.

TIGARD, OREGON 97223
Dec of Merrithew
Exhibit 5 - Page 1 of 72

REMOTE DEPOSITION BY VIDEOCONFERENCE OF**COMMANDER JEFFREY BELL****TAKEN ON****FRIDAY, OCTOBER 29, 2021****9:08 A.M.****THE VIDEOGRAPHER:** We are on the record.

The time is 9:08 a.m. The date is October 29, 2021.

This is the beginning of the deposition of Jeffrey Bell. The case caption is, Don't Shoot Portland versus City of Portland.

Will counsel please introduce yourselves and state who you represent.

MS. ALBIES: J. Ashlee Albies counsel for plaintiff. With us today is Maya Rinta, Juan Chavez, Alex Meggitt, Franz Bruggemeier. I believe that's it. Also counsel for plaintiff.

MR. MOEDE: And Scott Moede for defendant City of Portland, and also with us is Mike Porter, Rob Yamachika, Naomi Sheffield and Clair Warnock, and I think Clair Warnock has identified herself as a paralegal.

The other folks are attorneys for the City of Portland.

THE VIDEOGRAPHER: Our court reporter will

1 swear in the witness.

2 **THE REPORTER:** Mr. Bell, would you please
3 raise your right hand.

4 Do you solemnly swear or affirm under
5 penalty of perjury that you are Jeffrey Mark Bell,
6 and the testimony you're about to give will be the
7 truth, the whole truth and nothing but the truth.

8 **THE DEPONENT:** Yes, I do.

9 **THE REPORTER:** Counsel, you may proceed.

10 **JEFFREY BELL,** having been first duly sworn, was
11 examined, and testified as follows:

12 **EXAMINATION**

13 **BY MS. ALBIES:**

14 **Q.** Good morning, Commander -- is it Commander
15 Bell?

16 **A.** Yes.

17 **Q.** We've met previously in other cases. I'm
18 here today to take your deposition on behalf of the
19 City of Portland.

20 And because I've taken your deposition
21 before, I know you probably remember some of the
22 rules, but I'll go over them very briefly.

23 One of the most important ones is to
24 answer the question audibly, and also, if you don't
25 understand a question that I'm asking, just let me

1 know. I'm happy to rephrase it. Otherwise, if you
2 answer the question, we'll understand that you
3 understood the question as it was asked. Does that
4 make sense?

5 A. Yes.

6 Q. And because of the lag, we'll do our best
7 to not talk over each other and give it an extra
8 beat, which I know you're doing pretty well at this
9 point.

10 How many times have you testified in a
11 deposition?

12 A. Several. Less than ten, but I don't know,
13 five or six perhaps. I don't remember an exact
14 number.

15 Q. Okay. And so you understand that if you
16 testify differently at trial or in a hearing than
17 you do here today, we can show this transcript or
18 show this video and point out those discrepancies;
19 do you understand that?

20 A. Yes, I do.

21 Q. And that's why it's important to give
22 complete and total answers today to my questions;
23 does that make sense?

24 A. Yes, it does.

25 Q. Okay. So you are here today designated as

1 **a representative of the City under FRCP 30(b)(6) ; do**
2 **you understand that?**

3 A. Yes.

4 **Q. And what is your understanding of the**
5 **topics that you're here to testify about today?**

6 A. My understanding is that I am here to
7 testify regarding the City's knowledge of complaints
8 and any sort of corrective action, disciplinary
9 action taken against officers based on use of force
10 during -- and I don't have the dates right off the
11 top of my head, but during certain dates of the
12 protests last year, and specifically regarding
13 impact munitions, chemical agents, and batons.

14 **Q. Okay. And you understand that you're**
15 **speaking for the City of Portland with respect to**
16 **these topics?**

17 A. Yes, I do.

18 **Q. And you believe you're prepared to do that**
19 **here today?**

20 A. I believe so, yes.

21 **Q. And it's your understanding that you have**
22 **consent and authorization to speak for the City of**
23 **Portland on these topics that you've described?**

24 A. Yes, I do.

25 **Q. What did do you to prepare for this**

1 **deposition today?**

2 A. In order to prepare for the deposition, I
3 have reviewed a number of closed Internal Affairs'
4 cases on the dates specified and reviewed the
5 investigation reports and the findings of those
6 investigations.

7 I've also reviewed both City Code and
8 bureau directives regarding Internal Affairs'
9 investigations, Police Review Boards, discipline
10 process, and I've also, obviously, discussed the
11 matter with the City attorneys.

12 **Q. Did you review the Notice of Deposition**
13 **and the City's Objections and Designations to**
14 **plaintiff's Notice of Deposition?**

15 A. I reviewed the Notice of Deposition.

16 **Q. Okay. And that has been marked as Exhibit**
17 **1. Is that -- do you believe that that's the Notice**
18 **that you reviewed?**

19 A. I reviewed an Amended Notice that -- I
20 don't know what Exhibit 1 is, but --

21 **Q. Okay. Here, I can show you. That might**
22 **help.**

23 A. Okay.

24 **THE REPORTER:** And Ms. Albies, would you
25 like to mark Exhibit 1 for this transcript?

1 **MS. ALBIES:** Sure.

2 (WHEREUPON, a document titled, "Amended
3 Notice of Deposition" was marked as Exhibit 1 for
4 identification.)

5 **BY MS. ALBIES:**

6 **Q.** Do you see -- is this the Amended Notice
7 that you're referring to, Cmdr. Bell?

8 **A.** I believe so. The one I reviewed, I
9 believe, was dated September 21st, of this year.

10 **Q.** Okay. 20th, 21st.

11 **A.** 20th, yeah. I believe that was the one,
12 yes, that I reviewed.

13 **Q.** And I just want to direct your attention
14 to Paragraphs 5, 6 and 12?

15 **A.** Okay.

16 **Q.** And just confirm that these are the
17 topics on which you're prepared to testify today?

18 **A.** Yes, I am prepared on 5, 6 and 12.

19 **Q.** Okay. Thank you. And I will show you
20 what has been marked as Exhibit 2, and I'll mark it
21 for this deposition as well.

22 **MS. ALBIES:** Jennifer, I'll email those in
23 a moment.

24 **THE REPORTER:** Thank you.

25 (WHEREUPON, a document titled,

1 "Defendant's Objections and Designations" was marked
2 as Exhibit 2 for identification.)

3 BY MS. ALBIES:

4 Q. So this has been marked as Exhibit 2
5 already. It's Defendant's Objections and
6 Designations to the Notice of FRCP 30(b)(6)
7 deposition.

8 And I'll direct your -- did you review
9 this in preparation for this deposition?

10 A. I did not review that document. No.

11 Q. But looking at Paragraphs 5, 6 and 12,
12 I'll show you 12 in a moment, the City has
13 designated Chris Gjovick with respect to discipline
14 for Paragraph 5, and that's now you; correct?

15 A. That is correct.

16 Q. And same with Paragraph 6 -- excuse me,
17 this was designated Chris Gjovick, but that you are
18 taking Chris Gjovick's place with respect to
19 discipline for the purposes of Paragraph 6;
20 correct?

21 A. Yes.

22 Q. Same question with respect to Paragraph
23 12. The City designates Chris Gjovick, but you are
24 testifying as the designee instead of Chris Gjovick;
25 correct?

1 A. Yes.

2 Q. Okay. Thank you. So during the course of
3 this deposition, I might ask you questions and use
4 "you" and you understand that as I'm asking those
5 questions, that I really mean that the City of
6 Portland; does that make sense?

7 A. Yes, that makes sense.

8 Q. And so if you're giving an opinion that is
9 not on behalf of the City of Portland, what you're
10 designated, just make that distinction. Otherwise,
11 when I use the term "you" and you're responding to
12 those questions, we'll all understand that those are
13 the -- you're responding on behalf of the City; does
14 that make sense?

15 A. Yes.

16 Q. And you understand that your answers to
17 those questions are binding on the City; correct?

18 A. Yes.

19 Q. And you described reviewing several PPB
20 directives and part of City Code. I just want to
21 confirm that we're talking about the same
22 directives: Directive 330 applies to Internal
23 Affairs Complaint Intake and Processing. Is that
24 one of the directives that you reviewed?

25 A. Yes, it is.

1 control or crowd management complaints,
2 investigations regarding personnel in the bureau in
3 the rank of captain or higher.

4 Were there any of the investigations that
5 you reviewed for the purposes of this deposition
6 where IPR reviewed -- conducted an investigation
7 into any bureau member with a rank of captain or
8 higher?

9 A. Let me think about that for a minute. I
10 don't -- I don't believe any of them that I
11 reviewed, no, had any members of the rank of captain
12 or higher.

13 Q. Okay. And IPR is authorized to have
14 jurisdiction to conduct investigations into force
15 allegations; correct?

16 A. Yes.

17 Q. For Internal Affairs, you described that
18 they were non-sworn officers who were the
19 investigators. Are the Internal Affairs'
20 investigators formerly sworn PPB members?

21 A. So they are not unsworn officers. They're
22 just non-sworn members of the bureau. Sorry, you
23 said non-sworn officers.

24 Q. Right.

25 A. At this point, I'm thinking, three of the,

1 I believe, eight investigators are former detectives
2 with the police bureau. The other five had not
3 previously been employed by the police bureau in a
4 sworn capacity.

5 **Q. Had they been employed by other law**
6 **enforcement agencies in a sworn capacity; if you're**
7 **aware?**

8 A. Let me think. Yes, some of them have.
9 Some of them have not.

10 **Q. So you described, I believe I heard you**
11 **described IPRs investigations are, for the most**
12 **part, initiated by citizen complaints; is that**
13 **correct?**

14 A. That is correct, yes.

15 **Q. Are -- what about Internal Affairs'**
16 **complaints? Are those mostly initiated by citizen**
17 **complaints or community complaints?**

18 A. Yes, I would say the vast majority of the
19 complaints that we investigate are citizen or
20 community-member initiated.

21 **Q. Okay. Are there other initiators of**
22 **investigations for either IPR or IA that are not**
23 **community-initiated complaints?**

24 A. Yes.

25 **Q. And what is that?**

1 That there are -- there's potential misconduct on
2 the behalf of one of our -- one of our members.

3 Q. Okay. So fair to say that regardless of
4 how a complaint or an investigation is initiated
5 with either IPR -- IPR or Internal Affairs, that the
6 investigation and the process that follows is
7 consistent?

8 A. Yes.

9 Q. And you described community-based, kind of
10 complaints or investigations can come from a variety
11 of sources, including within the bureau, news
12 stories, anonymous, tort claim notice and legal
13 actions; correct?

14 A. Yes.

15 Q. Okay. And with respect to force
16 investigations, regardless of how they are
17 initiated, IPR and IA attempt to or do conduct those
18 investigations in a manner consistent with past
19 practices and consistent with each other; is that
20 fair to say?

21 A. Yes, that's fair to say.

22 Q. Were any of the investigations that you
23 reviewed for the purpose of this deposition here
24 today initiated from anonymous sources?

25 A. I don't believe so. No.

1 Q. Okay. Were any of them initiated from
2 news sources or news reports; as far as you know?

3 A. Of the closed cases, not to my knowledge.
4 No.

5 Q. And were any of the investigations that
6 you reviewed for today initiated from tort claim
7 notices or legal actions?

8 A. Yes.

9 Q. Do you recall which ones?

10 A. If you ask me about specific ones, I could
11 say. I don't remember right off the top of my head
12 which ones.

13 Q. Okay. But you'd expect that
14 investigations initiated from tort claim notices or
15 legal actions would be conducted consistent with
16 complaints or investigations initiated from
17 community members or bureau members; correct?

18 A. Yes.

19 Q. And is there any other ways in which
20 complaints are investigated? Or excuse me, or
21 investigations are initiated other than what we've
22 discussed already here today?

23 A. Again, I feel like there have been one
24 offs throughout the years. I can't think of
25 anything specific off the top of my head but -- and

1 the --

2 Q. And I mean specific to force, uses of
3 force.

4 A. Specific to uses of force. They have been
5 generated in the past when -- and I guess I've kind
6 of described this, but when, you know, use of force
7 is reviewed by supervisors and command staff through
8 an After-Action process, if someone believes that
9 the officer's actions are out of policy, they have
10 referred those directly to Internal Affairs to do an
11 investigation.

12 So kind of like what I described about
13 bureau members initiating citizen complaints.

14 Q. Okay. So if a supervisor reviews a Force
15 Data Collection Report or reviews a particular
16 situation, determines that a force -- use of force
17 may be out of policy in an After-Action review, they
18 can refer that to Internal Affairs or IPR to conduct
19 an investigation; is that correct?

20 A. That is correct, yes.

21 Q. Are any of the investigations that you
22 reviewed for the purpose of this deposition, did
23 that situation occur?

24 A. No.

25 Q. Are you aware of whether any After-Action

1 guess I'm -- well, I believe that it certainly is
2 possible that an officer could use force in a manner
3 that was outside of policy, and there would be, for
4 whatever reason that was not brought to the bureau's
5 attention. I'm not sure how we would necessarily
6 know about that if it wasn't somehow brought to our
7 attention.

8 **Q. Okay. That's what -- I'm trying to get at**
9 **whether you would agree that sometimes inappropriate**
10 **uses of force might slip through the cracks, because**
11 **they don't get initiated by one of the methods that**
12 **we've talked about here this morning.**

13 **MR. MOEDE:** And I'll object to the form.

14 **BY MS. ALBIES:**

15 **A.** And again, what I would say is, if -- if
16 they do, as you say, slip through the cracks, either
17 I wouldn't know about it, or as soon as it became
18 apparent to us that it had passed levels of review
19 and had not been complained about or had not been
20 brought to our attention, as soon as it was brought
21 to our attention, an investigation would be
22 initiated.

23 **Q. And the IPR and the IA process that we've**
24 **talked about thus far, is that the only way that**
25 **officers could be held responsible or accountable**

1 **for violations of use of force policy?**

2 A. I would say by directive and by collective
3 bargaining agreement, yeah, that's pretty much the
4 only procedure we have to hold folks accountable for
5 violations of use of force directive.

6 Q. I want to talk a little bit about the IPR
7 process itself. So in terms of force investigations
8 related to the dates that are identified in Exhibit
9 1 that are subject to this complaint that you're
10 here to testify, in examining the uses of force with
11 the allegations of inappropriate use of force in
12 those cases, Internal Affairs and IA use Directive
13 1010 and Directive 635 to assess whether or not that
14 use of force was consistent with PPB policy;
15 correct?

16 A. Yes.

17 Q. Are there any other directives that they
18 use to assess, just for the use of force component?

19 A. Yeah. I'm not going to know the number
20 off the top of my head -- 315.30, maybe it is. It's
21 Satisfactory Performance.

22 There is a section in, I believe it's
23 315.30, the name of the directive is Satisfactory
24 Performance, and it refers to judging an officer's
25 use of force, kind of, and I'll paraphrase, but

1 very, very soon, in which case, typically there
2 might be a phone call, but usually within a day or
3 two they're seeing actual, you know, I was going to
4 say paper copies, but it's all digital now, but an
5 actual, written, this is what we're investigating.
6 These are the allegations.

7 And again, IPR has the ability to call
8 them up or say, "Hey, we think you should do this,"
9 or "We think you should change this," or "We think
10 this should be worded this way." And again, same
11 sort of situation. If IPR and the bureau don't
12 reach an agreement, IPR's recourse is to simply take
13 the investigation and do it themselves and write the
14 allegations how they want.

15 But IA doesn't conduct any investigations
16 without notifying IPR at the very beginning.

17 **Q. Sure. How does -- so a complaint**
18 **regarding force related to crowd control or force**
19 **that was used at the protest last year, however that**
20 **gets initiated, whether it comes from within the**
21 **bureau or it comes from community complaint or**
22 **whatever, it comes from a legal claim, IPR gets**
23 **notice -- like, can you explain to me, like how does**
24 **IPR and IA decide who will conduct the actual**
25 **investigation? Whether it's going to be an IPR**

1 **investigator or whether it's going to be an Internal**
2 **Affairs investigator?**

3 A. So typically, again, the vast majority of
4 these cases come through IPR anyway. Even some
5 cases that come to the bureau end up going through
6 IPR. For instance, if an officer out on the street,
7 someone wants to complain about something someone
8 else did, we encourage our officers to take that
9 information down. Our directives require that they
10 take complaints from folks.

11 The officer will take that and forward
12 that on, you know, to Internal Affairs, but
13 oftentimes, they will also say, "Look, I'll take
14 this. I'll forward this on to Internal Affairs.
15 Here's a phone number for the independent police
16 union, contact them," and so we find that sometimes
17 when a complaint comes through the bureau, it's gone
18 through IPR as well.

19 So -- and I apologize. I totally lost my
20 train of thought. Could you ask the question?

21 **Q. Where does the -- where does it go to IA?**
22 **Where does it go to IPR? If IPR gets the complaint,**
23 **you know, we're talking about the investigations**
24 **that we're looking at.**

25 And to be clear, I've seen the Internal

1 Affairs' decision-making process, kind of policy
2 which I'm happy to show you, but I'm really just
3 looking for a summary of like how does the City
4 determine whether something goes to an Internal
5 Affairs investigations versus going to an IPR
6 investigator?

7 A. So ultimately, IPR makes that decision and
8 it's made in a number of different ways. Like I
9 said, most of the complaints come through IPR. An
10 investigator takes the initial call or reads the
11 initial email, does a preliminary investigation,
12 submits that to the director or the assistant
13 director who, typically, they are going to be the
14 decision maker. They're going to decide what is
15 going to happen with that complaint.

16 Are we, the City going to investigate
17 that? And then they will typically make a decision,
18 again, based on the criteria that I talked about
19 earlier or sometimes they will just pick a random
20 one say, "No, IPR is taking that." They will decide
21 that IPR is taking that or they will decide, "No,
22 we're gonna give this one to the bureau to do."

23 And again, that's the typical path. The
24 slightly or the much less frequent path is that
25 complaint comes through the bureau with no knowledge

1 to a bureau file, like an FDCR or an After-Action
2 Report, can they just find it within the system
3 fairly quickly? Or do they have a similar process
4 to the IPR investigators when seeking that
5 information?

6 A. No. They have direct access to the record
7 management system so they can for instance search by
8 case number or search by, you know, a person's name.
9 And if the report is in the system, they have access
10 to it.

11 Q. Okay. And so in conducting investigations
12 because the -- in reviewing these and just based on
13 my understanding, IPR investigators cannot compel
14 any officers, whether witnesses or subjects of the
15 complaints to answer IPR investigator questions
16 directly; correct?

17 A. That is correct.

18 Q. So they have to have either an Internal
19 Affairs investigator or somebody in the subject or
20 witness officer's chain of command order them to
21 answer the questions truthfully and honestly;
22 correct?

23 A. It's been done a couple of different ways.
24 Typically, we have one of the Internal Affairs
25 sergeants, so it's not necessarily someone in their

1 chain of command, but it is you know, a supervisor
2 that, yes, gives them the same basic admonishment
3 and orders them to cooperate with the investigation
4 the same way an investigator would do during an IA
5 investigation.

6 **Q. And why is that?**

7 **A. The reason for that is the collective**
8 **bargaining agreement does not allow for IPR**
9 **investigators to compel testimony from police**
10 **officers or sworn members.**

11 **Q. Okay. And so this arrangement where**
12 **there's a sergeant who is there directing the**
13 **witness or subject officer to answer the questions,**
14 **that's by agreement with IPR; correct?**

15 **A. That's correct.**

16 **Q. During those interviews with either a**
17 **witness or a subject of a force complaint, that**
18 **Portland Police Bureau member is entitled to have a**
19 **union representative with them; correct?**

20 **A. Correct.**

21 **Q. And what's the role, your understanding of**
22 **that union representative at the interviews?**

23 **A. So my understanding of the role is that**
24 **union representative is there in an advisory**
25 **capacity and what I have told investigators, IA**

1 on IPR's determination of who should conduct that
2 interview or the investigation; correct?

3 A. Yes.

4 Q. And at the end of the investigation, it
5 goes to -- does it go up the chain of command in --
6 if IPR is conducting the investigation, it goes up
7 the chain of command in IPR before it goes to the
8 reporting unit manager for the approval or review?

9 A. Yes, that's correct.

10 Q. Okay. And once it goes -- so it goes
11 through the IPR kind of review process, completed
12 IPR investigation, and then it goes to the reporting
13 unit; correct? Manager?

14 A. It actually goes to IA first.

15 Q. It goes to IA first, and then -- so what's
16 -- walk me through the process of review once an IPR
17 investigation is completed and goes to the review
18 within IPR.

19 A. So typically that investigation then will
20 come over to IA and the IA captain will typically
21 review it. Again, the IA captain does not have any
22 ability to force IPR to change anything.

23 However, I think on both sides of the IPR,
24 IA, you know, sides of the administrative or the
25 accountability system, I think, generally, we've

1 taken the view that more eyes on it is better. So
2 the IA captain may make suggestions or say, "Hey,
3 did you think about this?" Or, "Oh, I got questions
4 about this." "Did you ask this?" Those sorts of
5 things.

6 The IA captain has the ability to make his
7 or her case to IPR, but ultimately, that case is
8 then sent out to the RU manager for a review of the
9 investigator's recommended findings and they are
10 essentially tasked with -- with rendering proposed
11 findings, is what we call them.

12 And then I don't know, do you just want me
13 to keep going down the line?

14 Q. No, that's okay. I'm just -- I was trying
15 to clarity on the steps in that process.

16 And so the types of findings between
17 whether it's an independent IPR investigation versus
18 -- or an IA investigation are the same, unfounded,
19 exonerated, not sustained or sustained?

20 A. That's correct.

21 Q. Okay. In any -- well, let me ask this: In
22 the City's view is the IPR and Internal Affairs'
23 system that we've been discussing this morning, is
24 that working as it's supposed to?

25 A. I believe so, yes.

1 **MR. MOEDE:** Again, I'll just note the same
2 objections. That is not part of the Amended Notice
3 of Depositions. It's not part of either
4 investigation, knowledge or discipline. It doesn't
5 apply to the relevant dates, but go ahead.

6 **BY MS. ALBIES:**

7 A. So based on just looking at this and you
8 know, being the footnote, essentially, it does
9 appear, yes, that that is actual applications of
10 force.

11 **Q. Okay. So the applications of force that**
12 **the bureau is aware of during the 2020 Floyd**
13 **protests from May to October of 2020, between the**
14 **actual and the estimated is 5,160 and 1,091. So**
15 **that's over 6,000 uses of force for the protests**
16 **during that time period; correct?**

17 **MR. MOEDE:** I'm just going to again, note
18 the same objection. This is going to be the last
19 question I'll let him respond to on this.

20 **BY MS. ALBIES:**

21 A. And I apologize, because I'm reading the
22 notes, because I'm not entirely clear -- okay. The
23 way I'm reading it, and again, this is the first
24 time I have seen this particular document, I
25 believe. The way I'm reading it, yes. I agree with

1 your math there.

2 Q. And I'd like you to look at the document
3 entitled, "Crowd Control Tables, 4.21.21"? And
4 we'll mark that Exhibit 14.

5 (WHEREUPON, a document titled, "Crowd
6 Control Tables, 4.2.21" was marked as Exhibit 14 for
7 identification.)

8 THE REPORTER: So noted.

9 BY MS. ALBIES:

10 Q. Let me know when you have that up, Cmdr.
11 Bell.

12 A. I have it up now.

13 Q. Okay. So this document is the IPR's -- I
14 don't what to call this, it's their document
15 regarding the number of complaints made regarding
16 the protests. Have you seen this document before?

17 A. I don't believe so.

18 Q. This -- this document explains that this
19 sheet shows what happens -- what happened with
20 protest-related complaints and the allegations
21 involved. This information was updated on 4/21 --
22 excuse me, 4/21/21 and goes back to the first date
23 IPR received a George Floyd protest-related
24 complaint, 5/29/2020.

25 In addition to complaints of misconduct,

1 IPR has received over 4,000 individual items of
2 feedback about policing in general since the
3 beginning of the protests.

4 So this document says total protest cases,
5 125; force cases, 89. Is it your understanding that
6 that is consistent with the number of complaints
7 that IPR and IA have received regarding force
8 related to the George Floyd protests?

9 MR. MOEDE: Hold on. I'm just going to
10 note an objection. This is outside the Amended
11 Notice of Deposition for which Cmdr. Bell has been
12 designated, particularly on relevant dates.

13 We've also indicated previously that Ross
14 Caldwell, I think C-a-l-d-w-e-l-l is designated for
15 the IPR matters, and he can answer questions about
16 IPR complaints. Go ahead.

17 MS. ALBIES: My understanding was Mr.
18 Caldwell was designated for administrative closures.

19 MR. MOEDE: Yes, and this doesn't have to
20 do with anything related to what Cmdr. Bell is
21 designated to testify about.

22 MS. ALBIES: Well, there were over 6,000
23 uses of force, and there were 89 complaints about
24 force. I think that context is important to what
25 Cmdr. Bell is testifying about here today.

1 **MR. MOEDE:** Well, this is an IPR document,
2 right? So he hasn't reviewed it in preparation for
3 his deposition, because he wasn't designated as
4 such.

5 **MS. ALBIES:** So my question to Cmdr. Bell
6 was whether this is consistent with his
7 understanding generally about how many complaints
8 regarding force related to the George Floyd protests
9 that the City has received.

10 **MR. MOEDE:** Okay. I'll just note the same
11 objections. Cmdr. Bell, you can answer that. And
12 I'll also object to the form of the question. Go
13 ahead.

14 **BY MS. ALBIES:**

15 A. Again, this is the first time, I believe,
16 I've seen this. IA and IPR share the same data
17 base. I think we're both fairly good about keeping
18 that information up to date. I would say based on
19 what I'm reading here, that yes, it looks like there
20 were probably 125 total cases and 89 of them were
21 force cases. I'm just reading off the sheet.

22 **Q. Okay, but that doesn't -- that appears**
23 **consistent with your understanding?**

24 A. I believe so. Yes.

25 **Q. Okay. So in your review and your**

1 preparation for this deposition today, has the City
2 reprimanded either verbally or written or
3 disciplined any Portland Police Bureau member for
4 the use of excessive force in crowd control settings
5 on the dates relevant to this complaint which are
6 May 29th through June 2nd, June 5th and 6th, June
7 9th and 10th, June 12th, 13th, June 28th, June 30th,
8 July 4th, August 4th, August 10th, August 13th,
9 August 15th and 16th, August 22nd and 23rd and
10 September 5th?

11 A. So based on the closed cases that I've
12 reviewed on those dates, I am not aware of any
13 Portland Police Bureau member who has been given any
14 discipline for excessive -- specifically for
15 excessive force.

16 Q. Okay. Any -- what about counseling?

17 A. That, I am not aware of. However, there
18 could have been counseling that was undocumented.
19 Based on what I reviewed, no, I'm not aware of any
20 counseling.

21 Q. And the investigations that you reviewed
22 these closed cases where no bureau member was
23 disciplined or documented counseling related to the
24 use of excessive force, these investigations and
25 review practices are consistent with IPR and IA's

1 **practices; correct?**

2 A. Yes.

3 **MR. MOEDE:** Objection to the form, but go
4 ahead.

5 **BY MS. ALBIES:**

6 Q. And has the City disciplined, reprimanded
7 either verbally or written or counseled any Portland
8 Police Bureau member for violating its policies and
9 trainings with respect to the use of riot control
10 agents and less lethal weapons in crowd control
11 settings on the relevant dates that I just
12 identified?

13 A. No.

14 Q. And has the City -- is the City aware of
15 any Portland Police Bureau member violating its
16 policies and trainings with respect to the use of
17 riot control agents and less lethal weapons in crowd
18 control settings on the dates that I just
19 identified?

20 A. No.

21 Q. And has the City reprimanded or
22 disciplined or counseled any Portland Police Bureau
23 member for using or approving force used in crowd
24 control settings on the dates that I just identified
25 without sufficiently articulating a permissible

1 **justification?**

2 A. Again, based on the closed cases, no.

3 Q. And are these investigations in the

4 questions that I just asked you on these dates,

5 these investigations and review practices are

6 consistent with IPR and IA's practices as we've

7 described this morning; correct?

8 A. Yes, that's correct.

9 Q. Okay. So I want to direct your attention
10 to what is named "List of Cases." Let me know when
11 you have that up.

12 A. I have it up now.

13 MS. ALBIES: And we'll mark that as
14 Exhibit 15.

15 THE REPORTER: So noted.

16 (WHEREUPON, a documented titled, "List of
17 Cases," was marked as Exhibit 15 for
18 identification.)

19 BY MS. ALBIES:

20 Q. And do you recognize this document?

21 A. I -- I understand what it is. I don't
22 believe I've seen this specific document.

23 Q. What is it?

24 A. It appears to me to be a list of cases on
25 the subject dates involving --

1 investigations that would lead to discipline of any
2 bureau members other than the process that we've
3 been talking about this morning; correct?

4 A. Yes, that's correct.

5 Q. And so the City's position is that all of
6 the force that -- all of the uses of force and the
7 conduct that are subject to your answer that were
8 investigated by IPR or IA on this list, that the
9 sound for the cases that have been closed that all
10 of that conduct was within policy and consistent
11 with training; correct?

12 A. Yes, that's correct.

13 Q. And the City is confident that Internal
14 Affairs and IPR has the ability to address any
15 conduct that is outside of policy and hold people --
16 bureau members accountable; correct?

17 A. Yes.

18 Q. Okay.

19 MS. ALBIES: Can we take a -- like a six-
20 or seven-minute break?

21 MR. MOEDE: Yeah, and I can -- if you
22 want, during the break, we can kind of go through
23 when those other documents that I was objecting to
24 were produced and what it is? Clair is on and can
25 give an explanation if you're interested.

1 hit a protestor in a place other than where he was
2 authorized; correct?

3 A. Yes.

4 Q. I want to direct your attention to Exhibit
5 -- let's see. We're going to turn to IPR File
6 2020C-0335. This was the other -- this was, I think
7 it was Incident Number 9, where the Court found a
8 violation of 1010 of the TRO; do you recall this
9 incident?

10 A. Yes, I do. What was the document again?

11 Q. So I'd like -- so first we're looking at
12 the Opinion and Order which has already been marked
13 as Exhibit 16.

14 A. Okay.

15 Q. Oh, sorry, Exhibit 17 on Page 11,
16 describes -- subsection H describes Incident 9. Let
17 me know when you get there.

18 A. I'm there now.

19 Q. And this is the incident where, about an
20 hour after the protestors arrived, officers and
21 protestors came to a standstill a couple of blocks
22 from the PPA building, was some distance between the
23 police and the crowd. An individual walked out of
24 the crowd in front of the line of protestors,
25 approaching an unknown object in the street. As the

1 individual reached for the object, police fired
2 impact munitions at the individual, and they quickly
3 retreated into the crowd.

4 Officer Domka testified that the use of
5 force in this moment was appropriate, because the
6 individual by stepping out in front of the protest
7 and reaching down towards an object on the pavement,
8 may have indicated that they were about to throw the
9 object back at officers.

10 In the minutes that followed, protestors
11 continued to throw dangerous projectiles at the
12 police line with increasing frequency and velocity.

13 Some officers were hit and required medical
14 attention. Around 10:10 that evening, Captain
15 Passadore declared the event a riot, due to the
16 number of projectiles thrown and the danger that
17 they posed to police and protestors.

18 PPB deployed CS gas to disperse the crowd
19 and protestors were pushed further east into a more
20 commercial neighborhood just east of Interstate 5.
21 Hours later, the protest ended.

22 So I didn't read the citations. There's
23 citations to the Passadore declaration and exhibits
24 and various declarations, but it's your
25 understanding that the Court's recitation of the

1 facts here is based on the evidence that the Court
2 received during the contempt hearing; correct?

3 A. Correct.

4 Q. And that includes testimony here of
5 Officer Domka; is that correct?

6 A. Yes.

7 Q. And that also includes video evidence of
8 the incident at issue here; correct?

9 A. Yes.

10 Q. And so turning to Page 17 of the Order it
11 states as to Incident 3, the Court also finds that
12 Officer ██████████ deployment of ten rounds of his
13 FN303 against protestors -- oh, sorry, that's
14 Incident 3. My bad.

15 Looking at Page 18, which is Incident 9.
16 An unknown officer's use of impact munitions against
17 an individual approaching an item in the road
18 (Incident 9), which is what we're discussing, was
19 not in response to active aggression. The
20 individual walked out from the crowd of protestors
21 leaning towards an unknown object between the crowd
22 and police line. As they leaned down to grab the
23 item, an officer deployed multiple rounds from an
24 FN303 at them.

25 After reviewing this video, Officer Domka

1 testified that the behavior of this individual,
2 stepping out of the crowd towards the police line
3 and reaching down to pick up an object from the
4 pavement may indicate that the protestor is about to
5 throw an object at an officer and the Court writes,
6 but it simply cannot be that any attempt by an
7 individual to pick up an item off the ground at a
8 protest constitutes a threat of assault to officers
9 or others.

10 There was nothing in this moment to
11 suggest that the protestor was grabbing an item with
12 the intent to throw it at the police. The
13 individual moved slowly and was struck by a munition
14 before they even had the object in their hand.
15 Because this protestor was not engaged in active
16 aggression, the officer's use of impact munitions
17 violated the Order.

18 You had an understanding that that's the
19 Order that Judge Hernandez entered in this case;
20 correct?

21 A. Yes.

22 Q. And that's the basis of Complaint 2020-C-
23 0335; is that correct?

24 A. Yes, that's correct.

25 Q. So I want to turn to the documents that

1 are titled with, "0335" in the title. So 0335-IA
2 Closure?

3 A. Okay.

4 **THE REPORTER:** Ms. Albies, is this still
5 Exhibit 17 that you're referring to or are you --

6 **MS. ALBIES:** No. This'll be Exhibit 20.

7 **THE REPORTER:** Thank you.

8 (WHEREUPON, a document titled, "Portland
9 Police Bureau Internal Affairs Worksheet" was marked
10 as Exhibit 20 for identification.)

11 **BY MS. ALBIES:**

12 Q. And looking at what's been marked as
13 Exhibit 20, the IA Closure, it's titled, "Portland
14 Police Bureau Internal Affairs Worksheet," are you
15 familiar with this document, Cmdr. Bell?

16 A. Yes.

17 Q. And so it -- the allegations there say,
18 "Officer [REDACTED], " it gives -- I assume that's
19 his ID Number, "violated the terms of the temporary
20 restraining order in Don't Shoot Portland, et al
21 versus City of Portland for conduct Directive 315,
22 Laws, Rules and Orders," and the second allegation
23 is, "Officer [REDACTED] inappropriately deployed a
24 less lethal munition and struck an unknown subject,"
25 which is a force allegation under Directive 1010.

1 **So do you know who created these**
2 **allegations or framed them in this way for this**
3 **purpose?**

4 A. I believe IPR, but I don't -- I don't have
5 any way of knowing for sure. I just see that, based
6 on the information at the top of the sheet that this
7 came from IPR, received by Clithero. He's an IPR
8 investigator.

9 I would assume that they came from IPR,
10 but I don't know for sure.

11 **Q. Okay. And the -- this says this is an IA**
12 **closure information and the date it was closed was**
13 **on 9/1 of '21, and by Lt. SW -- is that SWK?**

14 A. Yes.

15 **Q. Okay. How do you pronounce that?**

16 A. Oh, that's initials.

17 **Q. Okay.**

18 A. Konczal is the name.

19 **Q. Say it one more time, please?**

20 A. The name is Scott, I don't know what is
21 middle -- his middle initial is obviously W., Scott
22 W. Konczal.

23 **Q. Okay, and he is the lieutenant with IA?**

24 A. Correct.

25 **Q. And so what does that indicate to you**

1 **where it's initialed?**

2 A. The captain or lieutenant initials that
3 when the case is to be closed. They put the
4 information and what the final findings were and
5 that's the closure date of the file. It just means
6 it all -- all the process has been gone through.

7 Q. Okay. **And the findings here were not**
8 **sustained; correct?**

9 A. That is correct.

10 Q. And the -- is there any meaningful
11 difference between allegation 1 and 2, to your
12 understanding?

13 A. You know, there's been some talk about,
14 because there were other cases that had this same
15 sort of language. I suppose there could be a fact
16 situation where one might be sustained and one might
17 not be.

18 I think there's often the attempt to try
19 to parse these out, so that we don't miss some form
20 of misconduct based on, you know, very strictly
21 limiting the language. Effectively, I don't believe
22 there's that much difference, no. **If he violated**
23 **1010, that would essentially mean that he violated**
24 **the temporary restraining order.**

25 Q. Okay. So I would like to direct your

1 A. Correct.

2 Q. I'm sorry. Did you answer that?

3 A. I did. I'm sorry. Correct.

4 Q. Okay. And it -- if you look on Page 1, it
5 says, "Applicable directives on date of occurrence,
6 315.00, Laws, Rules, Orders. 1010 Use of Force.
7 635.10 Crowd Management/Crowd Control."

8 Were these -- are these directives the
9 same as they are today that were in effect at the
10 time of this incident?

11 A. I believe they are the same ones in effect
12 today.

13 Q. Okay. So the way that this investigation
14 occurred is that this was initiated because of the
15 Court Order finding contempt in this case; correct?

16 A. That is correct.

17 Q. Then there was another companion case
18 related to a different incident for which the Court
19 found [REDACTED] also in violation of the
20 contempt order and 1010; correct?

21 A. That's correct.

22 Q. And it's your understanding that the
23 temporary restraining order that the Court found
24 [REDACTED]'s conduct to be in contempt of, was
25 essentially 1010 and restricting the use of less

1 lethal weapons consistent with 1010 and in addition
2 that they couldn't be used in a way that would
3 impact people engaged in passive resistance; is that
4 correct?

5 MR. MOEDE: Object to the form.

6 BY MS. ALBIES:

7 A. Yes, that's correct.

8 Q. Is there anything inaccurate about the way
9 that I've characterized it?

10 A. I don't believe so, no.

11 Q. Okay. And the investigator in this case,
12 John Rhodes, conducted an investigation independent
13 from Judge Hernandez' finding on the contempt order;
14 correct?

15 A. That's correct, yes.

16 Q. And Investigator Rhodes was applying a
17 Standard of Review of a preponderance of the
18 evidence which is less than the clear and convincing
19 evidence standard that Judge Hernandez was applying;
20 correct?

21 A. That's correct.

22 Q. I'd like to direct your attention to Page
23 10 of Exhibit 21.

24 MR. MOEDE: Is this the exhibit we're
25 looking at right now, counsel?

1 MS. ALBIES: This is the -- 0335 IA Report
2 which has been marked as Exhibit 21.

3 BY MS. ALBIES:

4 Q. So at the bottom of Page 10, it says,
5 "Investigator Comments," and it notes that Officer
6 Domka testified about the incident. In the Opinion
7 that we just read, it was -- the Opinion did not
8 identify [REDACTED] as the person shooting the
9 FN303; correct?

10 A. Yes, that's correct.

11 Q. But in the course of this investigation,
12 it became clear that it was [REDACTED] who did
13 use that force in that situation; correct?

14 A. Yes, that's correct.

15 Q. Okay. And so Officer Domka did testify
16 about -- testified to the Court that this particular
17 incident was consistent with Portland Police Bureau
18 Training and Directive 1010; correct?

19 A. Yes.

20 Q. And based on the Opinion that we've read
21 into the record, the Court was aware that there were
22 multiple objects being thrown at officers during the
23 course of this incident; correct?

24 A. Yes.

25 Q. Looking at Page 11 of this document? In,

1 "The Findings. This investigator finds that
2 Allegation 1 was not sustained. The evidence was
3 insufficient to prove a violation of policy or
4 procedure."

5 And it states that Allegation 1 is
6 apparently based solely on the Opinion and Order
7 document from federal case 320-cv-00917-HZ and
8 recites the Court's conclusion that we've already
9 into the record on Page 18 of that Opinion and Order
10 which has already been marked here as Exhibit 17.

11 And it says that the Opinion does not take
12 into account the actions of the protestors
13 throughout the evening before and after this
14 instance, including multiple instances of protestors
15 throwing a variety of objects at the police, either
16 objects already in their possession or objects they
17 retrieved from the ground, which would have an
18 impact on what an officer might objectively and
19 reasonably believe what was about to happen in a
20 similar circumstance.

21 The videos of the evening's events as well
22 as the reports by the officers are illustrative of
23 such actions and of some members of the protest
24 groups.

25 So as we've already discussed, the Court

1 did actually have information about protestors

2 throwing objects at the police; correct?

3 A. Yes.

4 Q. And did have information about what an

5 officer might objectively and reasonably believe was

6 about to happen in similar circumstance; correct?

7 MR. MOEDE: Object to the form.

8 BY MS. ALBIES:

9 A. Yes.

10 Q. And did have the benefit of Officer

11 Domka's testimony about this particular incident

12 that it was, in his opinion, consistent with policy

13 and training; correct?

14 A. Yes, that's correct.

15 Q. So fair to say that this investigator's

16 report and opinion and a finding of not sustained

17 differed from the Court's opinion on the same

18 conduct; correct?

19 A. Yes, that's correct.

20 Q. And as part of the analysis of 1010 and

21 the standards set by 1010, it incorporates the

22 totality of the circumstances of the event and the

23 incident at issue; correct?

24 A. I apologize. I missed the first part of

25 that question.

1 Q. 1010 incorporates the Graham Standard of
2 reasonable totality -- reasonableness of force and
3 the totality of the circumstances; correct?

4 A. Yes, that's correct.

5 Q. And that includes weighing an interest of
6 -- the interest in protecting people's First
7 Amendment rights to engage in peaceful protest and
8 balancing that against the governmental interest in
9 maintaining order; correct?

10 A. Yes.

11 Q. Okay. So the Internal Affairs
12 investigator who is conducting this investigation is
13 conducting that balancing act; correct?

14 A. Yes.

15 Q. And the Court, in reviewing the same
16 conduct, was also conducting that balancing act;
17 correct?

18 A. Yes.

19 Q. And the Court in conducting -- in the
20 Opinion that the Court gave, the Court didn't say
21 that any officer had to wait until a subject threw
22 an object at the officer before using force against
23 that person; correct?

24 A. Yes, I don't recall that statement.

25 Q. But the Court essentially said there had

1 to be something more than just bending down to pick
2 it up; correct?

3 A. Yes.

4 Q. And so this investigation report sets out
5 the reasons and the rationale why this investigator
6 disagreed with the Court; correct? On the same
7 incident.

8 A. Yes.

9 Q. Okay. And I'd like to direct your
10 attention to Exhibit 0335-IA Report Addendum, which
11 we've marked as Exhibit 22. And this is dated
12 August 4th of 2020 (sic); is that correct?

13 A. That's correct, yes.

14 Q. So this -- the prior exhibit was dated May
15 21st of 2021; correct?

16 A. I don't have it still pulled up.

17 Q. I'll represent to you that it was dated
18 May 21st of 2021, and this second addendum was a few
19 months later in August of '21; correct?

20 A. I do see, yes, the August of 2021 for the
21 addendum.

22 Q. Okay. And the addendum incorporates
23 additional information from the Court hearing
24 wherein the Court found that [REDACTED]'s
25 conduct had violated -- or this incident, the

1 **for identification.)**

2 **BY MS. ALBIES:**

3 A. Yes

4 **THE REPORTER:** So noted.

5 **BY MS. ALBIES:**

6 Q. That's dated June 3rd, so that's based on
7 the review of this initial investigation; correct?

8 A. That's what it appears to be, yes.

9 Q. Okay. Was there another RU memo on the
10 addendum investigation or that doesn't have to
11 happen at that stage?

12 A. No. If the investigation is amended,
13 there should have been an additional RU Findings
14 Memo.

15 In the materials that I reviewed, I have
16 one dated August 17th.

17 Q. Okay. I'd like to direct your attention
18 to, let's see -- well, looking at, and based your
19 review of the file, it's your understanding that IPR
20 ultimately agreed with the Internal Affairs
21 investigator in this case that the allegation was
22 not -- both allegations were not sustained; correct?

23 A. That is correct.

24 Q. And it's your understanding that Internal
25 Affairs agreed with the investigator's finding that

1 **this was -- these two allegations were not**
2 **sustained; correct?**

3 A. Yes.

4 Q. And it's your understanding that the
5 **Chief's Office agreed with the finding that these**
6 **allegations were not sustained; correct?**

7 A. Yes, that's correct.

8 Q. Okay. And those findings are directly
9 **contradictory towards -- to the Court's findings**
10 **that these -- this conduct, the same conduct**
11 **violated the temporary restraining order and 1010;**
12 **correct?**

13 A. Yes.

14 Q. And what is your understanding of why that
15 **is?**

16 A. My understanding is there are a couple of
17 reasons. In terms of the analysis of the video, in
18 the Judge's order, the Judge is specific in saying
19 that the unknown individual simply reaches down to
20 pick up the item and that is an unknown item.

21 In looking at the video evidence, the
22 investigator and then the decision maker is to
23 follow, all believe it is fairly conclusive from the
24 video that that was not an unknown object, that it
25 was a canister from a triple chaser gas canister,

1 and that it is also clear from the video and
2 conclusive that the subject did actually pick it up
3 and what is not clear from the video is -- or I
4 apologize. Strike that.

5 That the -- that the -- so that was the
6 information that the decision makers and the
7 investigator used to come to a different conclusion.
8 They could not prove they believed with a
9 preponderance of the evidence that Officer [REDACTED]
10 had violated the directive and in addition, felt
11 that given the additional analysis and the
12 conclusions they drew from the video evidence, that
13 this event was very similar to Event Number 8
14 involving Mr. Greatwood.

15 **Q. Well, Event Number 8 involving Mr.**
16 **Greatwood, the Court described differently as Mr.**
17 **Greatwood walking very quickly towards an object and**
18 **stooping down to pick it up; correct?**

19 A. The Court described, yes. That's how the
20 Court described it.

21 **Q. And the Court had the benefit of the video**
22 **in examining this incident; correct?**

23 A. They did, yes.

24 **Q. And the Court says it's an unidentified**
25 **object, but it doesn't say that it could not have**

1 been a canister; correct?

2 A. That's correct.

3 Q. So the Court could have acknowledged that
4 it was canister and that wouldn't necessarily make
5 a difference to the Court's analysis; correct?

6 MR. MOEDE: Object to the form.

7 BY MS. ALBIES:

8 A. Yeah, I can't answer that.

9 Q. So the understanding that this was a
10 canister of triple chaser that had already been
11 spent; correct?

12 A. I believe so, yes.

13 Q. Okay. And that the subject picked it up;
14 correct?

15 A. Correct.

16 Q. And those are the kind of primary bases
17 for a difference of opinion about whether Officer
18 conduct was reasonable; is that correct?

19 A. Yes, that's correct.

20 Q. There was additional training on the
21 Court's order related to this incident; is that
22 correct?

23 A. That's correct, yes.

24 Q. So if the same incident happened today,
25 under the same circumstances, the City would find

1 the same conduct of Officer [REDACTED] to be within
2 policy; is that correct?

3 **MR. MOEDE:** I'm going to object to the
4 form. Again, this is outside of the amended Notice,
5 but go ahead and answer.

6 **BY MR. ALBIES:**

7 **A.** Yes, I believe so.

8 **Q.** I'd like to direct your attention to
9 2020-C-0334.

10 **MR. MOEDE:** Ashlee, could I take a quick
11 restroom break just to --

12 **MS. ALBIES:** Sure.

13 **MR. MOEDE:** I'll be right back.

14 **THE VIDEOGRAPHER:** Would you like to go off
15 the record, counsel?

16 **MS. ALBIES:** Sure.

17 **THE VIDEOGRAPHER:** The time is --

18 **MS. ALBIES:** I'm going to -- I'm going to
19 do the same.

20 **THE VIDEOGRAPHER:** The time is 11:41 a.m.,
21 and we are off the record.

22 **(WHEREUPON, a brief recess was taken.)**

23 **THE VIDEOGRAPHER:** We are on the record.
24 The time is 11:52 a.m. You may now proceed.

25 **BY MS. ALBIES:**

1 Q. Cmdr. Bell, I'd like to -- to look at the
2 exhibit that I just emailed to counsel. We're going
3 to mark that as Exhibit 25.

4 (WHEREUPON, multiple Proposed Findings
5 Cover Sheets documents were marked as Exhibit 25 for
6 identification.)

7 BY MS. ALBIES:

8 Q. And this is RU Proposed Findings Cover
9 Sheet, IA Proposed Findings Cover Sheet, IPR
10 Proposed Findings Cover Sheet and Addendum, CHO
11 Proposed Findings Cover Sheet, and as we -- you just
12 testified and as I just asked you, all of the
13 reporting unit, independent of IPR, Independent
14 Police Review, Internal Affairs and CHO stands for
15 the Chief's Office; correct?

16 A. Yes, that's correct.

17 Q. All of these entities concur with the
18 findings of the IA investigator that Allegations 1
19 and 2 based on Officer [REDACTED] conduct that the
20 Court found in violation of the temporary
21 restraining order and Directive 1010 as being a
22 violation, all of these entities found it not
23 sustained; is that correct?

24 A. Yes, and it's just a fine point. They're
25 actually concurring with the RU Manager's proposed

1 findings, not -- not the recommended findings.

2 They're weighing in on what the RU Manager said. In
3 this case it's the same, but --

4 Q. Okay. Understood. Thank you. That's
5 helpful. So the RU Manager reviews the Internal
6 Affairs investigation and essentially is the --
7 accepting those findings, the recommended findings
8 and proposing those findings as not sustained, does
9 that adopt the entirety of the investigation by the
10 IA investigator?

11 A. Not necessarily. If there are -- if there
12 are details -- if there's additional evidence that
13 they consider it a different way, they might agree
14 with the findings, but they might have a slightly
15 different analysis. They do have the ability to put
16 that in there, but if all they say is simply that I
17 concur, then yes. I would say they are adopting,
18 yes, the -- the reasoning of the IA or IPR
19 investigator in making the recommended findings.

20 Q. Okay. And so looking at Page 3 of what's
21 been marked as Exhibit 25, Pages 3 and 4, this is an
22 example of what you're talking about where IPR
23 Director Ross Caldwell attaches something and makes
24 a comment on the findings; correct?

25 A. That's correct.

1 couple of ones.

2 **BY MS. ALBIES:**

3 **Q. So I want to direct your attention to what**
4 **-- Case Number 2020-C-0334. And this is the Lester**
5 **Wrecksie as the complainant and it is based on the**
6 **Judge's contempt finding for Incidents 2 and 3. Do**
7 **you have that understanding, Cmdr. Bell?**

8 A. It's not -- yes and no. It's not quite
9 that simple.

10 **Q. Okay. Tell me about that.**

11 A. There was, actually an additional case
12 opened. I am not entirely clear on why this was
13 separated in two cases. There is actually a
14 separate case that was peeled off of this that deals
15 with the same use of force, but looks at it from the
16 perspective of the folks who may have actually been
17 struck, who are unknown individuals.

18 So there is a second case. I think you
19 have it in your list of cases, but it's still open.
20 That's 21 -- or 2021-C-0075. That is also looking
21 at this exact same incident and also evaluating the
22 Judge's order.

23 **Q. Why -- why?**

24 A. I -- the reason why is the cases came in
25 at different times. For whatever reason, one of the

1 cases came in originally -- let me see here. Let me
2 see at chro notice to see if I can explain a little
3 better.

4 It is -- it is -- I'm not finding the
5 document. There it is. So again, I can't
6 necessarily explain why. I can explain what
7 happened.

8 What happened was, again, this was looked
9 at from the point of view of Mr. Wrecksie and I --
10 some of the analysis and I can talk about this one,
11 because this one's closed, is that Mr. Wrecksie did
12 not have force use on him, that there was -- there
13 was essentially Mr. Wrecksie and then other
14 individuals in the crowd who may have used force on
15 them. It was looked at from Mr. Wrecksie's point of
16 view, and then it was looked at from the other
17 folks' point of view and so again, I can't
18 necessarily explain why but the decision was made to
19 open two separate cases.

20 **Q. Does it matter whether or not Mr. Wrecksie**
21 **or somebody else had force used on them for the**
22 **purposes of conducting an investigation?**

23 A. Could you -- could you ask that a
24 different way? Could you -- I'm not --

25 **Q. Well, what you just described -- what you**

1 just described is that Mr. Wrecksie did not have the
2 force used on him. There were two people that the
3 Court found that Officer [REDACTED] had used force on --
4 were not engaged in active aggression, that Officer
5 [REDACTED] described as trying to unarrest Lester
6 Wrecksie; correct?

7 A. That's correct, yes.

8 Q. And the Court did not agree with Officer
9 [REDACTED] perspective on that. The Court found that
10 they were not, in fact, engaged in active
11 aggression; correct?

12 A. That's correct.

13 Q. And the Court based that upon testimony
14 of Officer [REDACTED]; correct?

15 A. Yes.

16 Q. And video; correct?

17 A. Yes.

18 Q. Same video that was used in the IPR
19 investigation; is that correct?

20 A. I don't believe there was an IPR
21 investigation.

22 Q. Or Internal Affairs investigation?

23 A. Yes.

24 Q. And the Internal Affairs investigation
25 found that Officer Taylor's perspective that these

1 officers were engaged in active aggression was
2 reasonable under the circumstances; correct?

3 A. I'm sorry. Could you repeat that.

4 Q. That Internal Affairs' investigation found
5 that Officer [REDACTED]'s use of force against
6 individuals he believed were engaged in active
7 aggression by what he described as trying to
8 unarrest Lester Wrecksie, the Internal Affairs'
9 investigation found that to be within policy;
10 correct?

11 A. In this investigation, yes.

12 Q. And that's directly at odds with Judge
13 Hernandez' Order that use of force directed against
14 those two individuals was within policy and
15 consistent with 1010; correct?

16 A. Yes.

17 Q. And Judge Hernandez in the contempt
18 finding specifically found that those two
19 individuals were not engaged in active aggression;
20 correct?

21 A. Yes, that's correct.

22 Q. So again, Internal Affairs' investigation
23 is directly at odds with the federal court judge
24 ruling in this case; correct?

25 A. Yes.

1 Q. And the federal court judge is applying a
2 standard that is higher than that applied by
3 Internal Affairs in this case; correct?

4 MR. MOEDE: Object to the form.

5 BY MS. ALBIES:

6 A. Yes, the standard used is a higher
7 standard.

8 Q. To make the finding of contempt; correct?

9 A. Yes.

10 Q. And is there any additional information
11 that -- well, why did Internal Affairs and then
12 approved all the way up the chain of command,
13 believe that Officer [REDACTED]'s use of force in that
14 scenario was consistent with 1010?

15 A. In the case of -- Case 334, the decision
16 was made because there was the belief that it was
17 reasonable for Officer [REDACTED] to have believed that
18 those individuals -- first of all, that Mr. Wrecksie
19 was under arrest, and that it was reasonable to
20 believe from his perspective that those individuals
21 were trying to unarrest him.

22 And that the interpretation of the
23 directive is that trying to unarrest someone is
24 active aggression.

25 Q. And that is directly at odds with the

1 Court's viewing of the same evidence that found that
2 it was incidental conduct and not an arrest;
3 correct?

4 A. That is what the Court found. Yes, that's
5 correct.

6 Q. I'll show you what we'll mark as Exhibit
7 --

8 MS. ALBIES: What number are we on,
9 Jennifer?

10 THE REPORTER: Twenty-six.

11 MS. ALBIES: Exhibit 26, the document
12 entitled, "0334 Wrecksie IA Investigation."

13 (WHEREUPON, a document titled, "0334
14 Wrecksie IA Investigation," was marked as Exhibit 26
15 for identification.)

16 MR. MOEDE: Ashlee, I'm looking for that
17 document. Can you just say again, please, what the
18 description is? 334 Wrecksie?

19 MS. ALBIES: Investigation -- IA
20 Investigation Report.

21 MR. MOEDE: Okay, thank you.

22 BY MS. ALBIES:

23 Q. And so this is the investigation conducted
24 by IA Investigator Luis Perez; is that correct,
25 Cmdr. Bell?

1 of incorporated all the proposed findings cover
2 sheets into one document for efficiency's sake.

3 But this is the CHO Proposed Findings
4 Cover Sheet which concurs with the RU Manager's
5 proposed finding of not sustained for Allegation 1
6 which is that [REDACTED] violated the terms of the
7 temporary restraining order in Don't Shoot Portland,
8 et al versus City of Portland, conduct Directive
9 315, and Allegation 2, which is that Officer [REDACTED]
10 inappropriately deployed a less lethal impact
11 munition --

12 THE REPORTER: I'm sorry to interrupt you,
13 Ms. Albies. You said -- did you say Officer [REDACTED] ?

14 MS. ALBIES: Officer [REDACTED].

15 THE REPORTER: [REDACTED], thank you.

16 BY MS. ALBIES:

17 Q. So Allegation 2 is that Officer [REDACTED]
18 [REDACTED] inappropriately deployed a less lethal impact
19 munition causing injury to Lester Wrecksie, which is
20 a force complaint in violation of Directive 1010 Use
21 of Force and 635 Crowd Management/Crowd Control.

22 The proposed findings from the RU Manager
23 are reflected on this document as not sustained.
24 And this is the Chief's Office concurring with those
25 findings; correct?

1 A. Yes, that's correct.

2 Q. And Page 2 of this is Internal Affairs'
3 Proposed Findings Cover Sheet which also concurs
4 with the same findings of not sustained; is that
5 correct?

6 A. Yes.

7 Q. And IPR Proposed Finding Cover Sheets as
8 well, concurs with the findings of not sustained for
9 those two allegations; correct?

10 A. Yes.

11 Q. And the last one is the RU Proposed
12 Findings Sheets which articulates the proposed
13 finding of not sustained; correct?

14 A. Yes, that's correct.

15 Q. Okay. And same here, none of these
16 proposed finding cover sheets has any comments or
17 addendums explaining the reasoning; correct?

18 A. In this document, yes, that's correct.

19 Q. Is it fair to say then lacking any kind of
20 comments or explanation they adopt the investigator
21 -- Internal Affairs' investigator's report as to the
22 basis of those findings?

23 MR. MOEDE: Object to the form.

24 BY MS. ALBIES:

25 A. And I can't say that for certain. There

1 is with the RU Proposed Findings Cover Sheet there
2 is always a findings memo which I think was included
3 with all of that, but I would -- I thought it was in
4 here.

5 **Q. Yes. That is 0334 Wrecksie RU Manager**
6 **Findings dated May 24th of 2021.**

7 A. Yes.

8 **MS. ALBIES:** We'll go ahead and mark that
9 as Exhibit 28.

10 **THE REPORTER:** So noted.

11 (WHEREUPON, a document titled, "0334
12 **Wrecksie RU Manager Findings" was marked as Exhibit**
13 **28 for identification.)**

14 **BY MS. ALBIES:**

15 **Q. Okay. So this is what you're saying is**
16 **the companion to Page 4 of Exhibit 27.**

17 A. Yes.

18 **Q. Okay.**

19 A. And I would say that because the findings
20 say, I agree with the recommended finding from the
21 investigator with no -- no additional information,
22 no caveats, nothing like that, that this is -- this
23 document is the RU Manager Commander Erica Hurley
24 adopting the reasoning from the recommended findings
25 as here proposed findings, and then going back to

1 the previous exhibit, the Chief's Office, IA, and
2 IPR are all agreeing with, again, the RU Manager's
3 proposed findings.

4 Q. Okay. And those findings that, not
5 sustained findings with regard to Allegation 1 and 2
6 are in direct contravention of the Court Opinion and
7 Order in this case; correct?

8 A. That's correct.

9 Q. And that's with regard to both Incident 2
10 and 3; is that accurate? As articulated in the
11 Court's Order? I mean, I'm struggling to understand
12 that parsing out when it's the same conduct of
13 Officer [REDACTED] that is at issue.

14 A. No. This is -- this is actually, this one
15 just covers Incident 3. It does not cover Incident
16 2. Again, the 0075 case that I mentioned before,
17 that covers Incident 2 and also covers Incident 3.

18 Q. That other case covers two incidents, this
19 one just covers Incident 3.

20 A. Yes.

21 Q. And that was where Officer [REDACTED] deployed
22 ten rounds from his FN303 against protestors trying
23 to pull an individual on roller skates back into the
24 crowd; is that correct?

25 A. For this case, 335 -- or 334, yes.

1 Q. Okay. And in that -- in making that
2 finding, the Court heard testimony from Office
3 [REDACTED] correct?

4 A. Yes.

5 Q. And saw a video from the incident;
6 correct?

7 A. Yes.

8 Q. Okay. Does the City have concerns about
9 making findings that are in direct contradiction to
10 a federal court judge?

11 MR. MOEDE: I'm going to object to the
12 form. I'm also going to object that this outside of
13 the amended Notice and for what he's been designated
14 but go ahead and answer.

15 BY MS. ALBIES:

16 A. No.

17 Q. And why not?

18 A. Because in the view of the investigator
19 and in the view of the people who have reviewed the
20 findings, the information in the investigation is
21 not exactly the same as the information that was
22 reviewed by Judge Hernandez and their interpretation
23 of the policy and their interpretation of the
24 evidence suggests to the decision makers in this
25 case that the conduct was not in violation of the

1 policy.

2 Q. Well, the information and the evidence was
3 the same. It's the interpretation that you're
4 saying is different; is that correct?

5 A. No, that's not what I said. I said the
6 evidence and the interpretation are different.

7 There were additional interviews conducted for this
8 investigation that were not part of the testimony in
9 front of Judge Hernandez.

10 Q. So additional interviews with witnesses
11 that were on scene?

12 A. Yes.

13 Q. And the video that was put into evidence
14 is insufficient for the Court to make that
15 determination; is that what the City's position is?

16 MR. MOEDE: Object to the form.

17 BY MS. ALBIES:

18 A. I apologize. Ask again. Could you please
19 ask it again?

20 Q. So I'm looking at the investigation report
21 and you have Officer Ariel Livingston, Officer
22 Nathan Jones, Officer Kyle Green, Officer Trevor
23 Middleton, Detective Harris, and Officer Hristov.
24 Those additional witnesses you're saying is the
25 additional evidence that allows the City to take a

1 contrary position to the Court's order in this case;
2 is that correct?

3 A. That's correct.

4 Q. The Internal Affairs investigation and the
5 determination of whether an officer's conduct is
6 within policy is based on the information that the
7 officer knew at the time; correct?

8 A. That's correct, yes.

9 Q. It's not based on what any witness
10 officers knew at the time; is that correct?

11 MR. MOEDE: Object to the form.

12 BY MS. ALBIES:

13 A. Yes, that's correct.

14 Q. And you would agree with me that video
15 evidence shows clearly what happened in this
16 situation; correct?

17 MR. MOEDE: Object to the form.

18 BY MS. ALBIES:

19 A. Yes.

20 MS. ALBIES: Okay, let's take our lunch
21 break.

22 THE VIDEOGRAPHER: Okay, please stand by.
23 The time is 12:23 p.m. and we are off the record.

24 (WHEREUPON, a luncheon recess was taken.)

25 THE VIDEOGRAPHER: We are on the record.

1 was not inappropriate. Like that was within policy.

2 Whether it hit Mr. Wrecksie doesn't seem
3 to impact that first step of the analysis; is that
4 correct?

5 A. I think -- yes, as I said, I think that is
6 -- that can be a factor or that may have been a
7 factor, but you're right. That wasn't detailed in
8 the analysis of the findings.

9 Q. There have been investigations into uses
10 of less lethal munitions that may or may not have
11 struck a subject and the focus is on whether the use
12 of the less lethal munition was appropriate or not;
13 correct?

14 A. Yes.

15 Q. And that is a more general way to address
16 whether the use of force is appropriate or within
17 policy, rather than tying it to the impact on the
18 individual who was struck or not struck; is that
19 correct?

20 A. Yes.

21 Q. Why with -- so we just discussed Incident
22 3 in the Court's Order, finding a violation of the
23 temporary restraining order, and that corresponds
24 with Case Number 0334; Incident 9 also was a
25 finding of the Court of contempt, violating the

1 **temporary restraining order corresponds with Case**

2 **2020-C-0355; correct?**

3 A. Yes.

4 Q. And the findings for the two allegations

5 **in both of those complaints or investigations was**

6 **not sustained; correct?**

7 A. That's correct.

8 Q. Why were they not sustained rather than

9 **exonerated?**

10 A. So I believe, and I would take them
11 separately. So to discuss Incident Number -- I get
12 them mixed up. Mr. Greatwood is Incident Number 8;
13 correct?

14 Q. I'm sorry. Say one more time.

15 A. I apologize. Mr. Greatwood is Incident
16 Number 8 and Incident 9 is the 335; correct?

17 Q. I believe so.

18 A. Okay.

19 Q. But I was asking not about Incident 8. I
20 was asking about Incident 3 with Wrecksie and
21 Incident 9 with the unidentified person.

22 A. I apologize. I was asking about Mr.
23 Greatwood cause I get Mr. [REDACTED] mixed up whether
24 that's 8 or 9.

25 So that's 8, and 9 is the unknown

1 the new allegations of misconduct are added to the
2 existing investigation and investigated as part of
3 that.

4 Q. In looking at -- I'll direct your
5 attention to one of the documents just emailed to
6 you, 2020-C-0174, [REDACTED] IPR letter.

7 MS. ALBIES: And I want to mark that as
8 Exhibit 29.

9 THE REPORTER: So noted.

10 (WHEREUPON, a document titled, "[REDACTED]
[REDACTED] IPR Letter" was marked as Exhibit 29 for
12 identification.)

13 BY MS. ALBIES:

14 Q. So this is a letter dated March 12th to
15 [REDACTED] who is the complainant in IPR Case
16 Number 2020-C-0174, and I want to direct your
17 attention to the last paragraph.

18 A. Okay.

19 Q. It says, in this letter, "IPR monitors all
20 complaints involving Portland Police Officers. The
21 complaint is stored in a database that leads to
22 analyzed patterns of conduct as they emerge over
23 time. These reviews help us to improve the quality
24 of police services to the community in the long-
25 term. Thank you for your contribution to our

1 **the officer whose conduct is at issue?**

2 A. If you can't identify the officer whose
3 conduct is at issue, you don't have any ability to
4 interview that person and get their version of
5 events.

6 That doesn't necessarily preclude someone
7 from finding the allegations sustained on the basis
8 of the evidence in the record. Typically, if we're
9 unable to identify an officer, we don't have enough
10 information to be able to sustain or obviously
11 exonerate and usually, typically those will end up
12 being not sustained. But there is nothing that
13 precludes an RU Manager or an investigator from
14 finding that to be a sustained violation of --

15 **Q. Again, it's an unidentified officer?**

16 A. Yeah.

17 **Q. Has that happened to your knowledge?**

18 A. To my knowledge, that has not happened.

19 **Q. So just because an officer whose conduct**

20 **is the subject of the complaint was not**

21 **identifiable, that doesn't mean the conduct as**

22 **alleged was within policy; is that correct?**

23 A. Yeah, that's correct.

24 **Q. Okay. I want to direct your attention to**

25 **-- well, I might not have to show this as an**

1 Q. Did you find any controverts in the
2 documents that you reviewed for this deposition?

3 A. No.

4 Q. Did you find any -- any of the closed
5 cases that you reviewed on the relevant dates for
6 the purposes of this deposition any disagreement on
7 the interpretation of directives and how RRT members
8 are expected to understand them?

9 A. No, I didn't.

10 MS. ALBIES: Okay, let's take a quick
11 break.

12 THE VIDEOGRAPHER: Please stand by. The
13 time is 2:01 p.m., and we are off the record.

14 (WHEREUPON, a brief recess was taken.)

15 THE VIDEOGRAPHER: We are on the record.
16 The time is 2:05 p.m. You may now proceed.

17 MS. ALBIES: Thank you.

18 BY MS. ALBIES:

19 Q. So Cmdr. Bell, in these investigations,
20 fair to say that the officers often rely on the
21 force data collection reports when thinking back to
22 an event weeks or months prior, sometimes a year
23 prior?

24 A. I think it's fair to say that's pretty
25 common.

1 Q. And if the information in that force data
2 collection report is inaccurate or incomplete, that
3 can impact that officer's ability to give an
4 accurate statement about what happened or what they
5 were thinking at the time of the incident; correct?

6 A. Yes.

7 Q. And then that, in turn, can impact
8 efficacy of the administrative investigation; would
9 you agree?

10 A. Yes.

11 Q. Okay.

12 MS. ALBIES: No further questions.

13 MR. MOEDE: I do have a couple of follow
14 ups.

15 **EXAMINATION**

16 **BY MR. MOEDE:**

17 Q. Cmdr. Bell, counsel asked you a question
18 about 335 and 334, I believe and whether or not the
19 City had any concerns about disagreement with a
20 federal judge. And I think your response no, as it
21 pertained to those two files in particular; correct?

22 A. Yes.

23 Q. Okay. And so could you clarify what you
24 meant by no concerns?

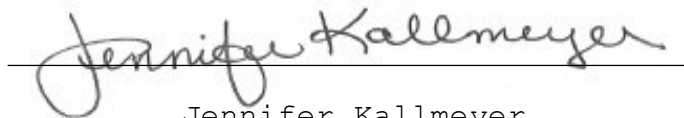
25 A. So I -- I obviously gave a yes or no

CERTIFICATE

I, Jennifer Kallmeyer, do hereby certify that I reported all proceedings adduced in the foregoing matter and that the foregoing transcript pages constitutes a full, true and accurate record of said proceedings to the best of my ability.

I further certify that I am neither related to counsel or any party to the proceedings nor have any interest in the outcome of the proceedings.

IN WITNESS HEREOF, I have hereunto set my hand this 12th day of November, 2021.

A handwritten signature in cursive script, reading "Jennifer Kallmeyer", is written over a horizontal line.

Jennifer Kallmeyer